

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES  
NEW YORK BRANCH OFFICE**

**MGM GRAND HOTEL, LLC  
d/b/a MGM GRAND**

**and**

**Case No. 28-CA-119372**

**CLAYTON SIMMONS, An Individual**

*Larry Smith, Esq. and Nathan Higley, Esq., Counsel for the General Counsel.  
Paul Trimmer, Esq. and Ashley Eddy, Esq., Jackson Lewis LLP, Counsel for the Respondent.*

**DECISION**

**Statement of the Case**

**Joel P. Biblowitz, Administrative Law Judge:** This case was heard by me on July 15 and 16, 2014 in Las Vegas, Nevada. The Complaint, which issued on March 31, 2014 and was based upon an unfair labor practice charge that was filed on December 19, 2013<sup>1</sup> by Clayton Simmons, an individual, alleges that on about December 12 MGM Grand Hotel LLC, d/b/a MGM Grand, herein called Respondent, by Tiffany Rodzach, its Director of Food and Beverage and a supervisor and agent of the Respondent, denied the request of Simmons to be represented at an interview by Local Joint Executive Board of Las Vegas, Culinary Workers Union, Local 226 and Bartenders Union Local 156, affiliated with UNITE HERE, herein called the Union, his collective bargaining representative, even though he had reasonable cause to believe that the interview would result in disciplinary action being taken against him, and she conducted the interview, and on about December 13 Respondent suspended Simmons pending an investigation of him. It is alleged that by these activities, the Respondent violated Section 8(a)(1)(3) of the Act. It is further alleged that at the same meeting on December 12 the Respondent, by James Makridis, its Chef, threatened its employees with unspecified reprisals because they engaged in union activities by asking to be represented by a Union representative at the meeting.

**I. Jurisdiction and Labor Organization Status**

Respondent admits, and I find, that it has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act, and that the Union has been a labor organization within the meaning of Section 2(5) of the Act.

**II. The Facts**

MGM Grand, one of the largest hotels in the world with almost 7,000 rooms, has a casino that is an important income source. In that regard, the Respondent has "high end" guests in a number of categories, such as "VIP" and "Noir," who are often "Comped" by the hotel due to their "high roller" status. Simmons is employed by the Respondent as a room service order taker in the food and beverage department. He works in an open office about ten feet by twenty feet,

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<sup>1</sup> Unless stated otherwise, all dates referred to herein relate to the year 2013.

containing about four to eight desks, although Simmons testified that there are only three or four order takers on each shift. The desks are close enough to each other that guests on the phone with order takers can hear other order takers speaking. The genesis of this case was a telephone order that Simmons received from the wife of a VIP guest on December 8, which  
 5 resulted in a disciplinary write up, a suspension pending investigation, and a suspension.

### A. December 8 Telephone Calls

On December 8 Simmons was working the 4:00 P.M. to midnight shift when he received  
 10 a call from a Ms. Ruiz, who placed an order with him. He checked the computer program that they employ, OPERA, and saw that the room was in her husband's name and that there was no specific authorization for her to charge her purchase to the room. After she had given him her order, he asked her what her form of payment was going to be and she replied that she was going to charge it to the room. He testified that he "...politely informed her that she was not  
 15 listed to the room and that if she would like to ...discuss this matter with the front desk, that I would transfer her over and that they would be more than willing to update her status." Ms. Ruiz became very hostile to him, and asked him questions that he could not answer because he could not make the changes that she wanted. He apologized to her, told her that if her husband was in the room that he could sign for it, but "...she wasn't really too happy with that" and he  
 20 transferred her call to the front desk, at which time, "...Jay, the front desk supervisor, told me to go ahead and release the call, because I did explain the situation to him, that this guest was trying to sign to the room." He testified that about thirty minutes later, he spoke to Jay, who told him that he had done the right thing and, in addition, Jay inserted a note in OPERA (a "trade line") saying, "...he...spoke to me...that I told her the right thing."

25 Shortly thereafter, Simmons told the other two other order takers in the room, Carolyn and Mary, that he had just spoken to Jay from the front desk and if they received a call from Room 10142, the guest would have to use a credit card or pay cash, unless her husband was in the room to sign for it. Carolyn then gestured to him and he looked on her computer screen and  
 30 saw that she was speaking to the guest in Room 10142. At the conclusion of the call, Carolyn told him that Ms. Ruiz had asked for his name.

There was testimony about the hotel rules regarding room charges. Jason Galvez, the assistant manager of in room dining, testified that when someone checks into the hotel, an entry  
 35 is made in OPERA stating who is authorized to charge orders to the room, and only the front desk can change that status. In that situation, the room service order taker can transfer the call to the front desk or can call the front desk directly to correct the situation. Simmons testified that the order takers do not know whether the guest placing the order is the typical guest or is a VIP or comped guest; if the person calling in the order is not authorized to charge the order to the  
 40 room:

We politely tell them that if they would like to pay cash for it, they can do so at the time of delivery. If they would like to use a different method of payment, which is credit card, we  
 45 can take a credit card over the phone, or if the person that is assigned to the room is in the room, they can sign for it.

He testified that this is true whether the guest is a VIP guest or not. He was asked whether this policy has changed in any way since he has been an order taker:

50 A No. As far as what I know, no.

Q And you've received no written guidance that would suggest otherwise? That's your

testimony?

A Nothing that I'm aware of, no.

5 Respondent introduced into evidence a memo sent by food service management to room service order takers dated February 16 and entitled: "Subject: VIP Guest List." It states:

10 As of February 16, 2013 an updated "VIP Guest List" will be distributed to all order takers by 5pm each day, once the new list is distributed, the list from the day before will be discarded by the Order takers. All order takers must have the current list with them at all times during their shift.

15 As the guest call [sic] Room Service to place an order, the Order takers are to look through the VIP List, if the guest is on the VIP List, stars will be entered on the ticket. This assures that the cooks as well as the servers know the guest is a VIP.

20 If the guest is on the list and showing "**Cash Only**" the Order taker is to take the order and bill it to "**Manual Room Charge**". The Order taker will **not** question the guest, the order taker will **not** transfer the guest to the Front desk. After the order is taken, the Order taker is to notify the Manager on Duty. [Emphasis supplied]

Necessary discipline action will be enforced if the above procedure is not followed.

25 When Simmons was shown this memo he testified, "I don't believe I was there on the date at issue." However the memo has his signature with the note, "I don't agree with this, but will sign." He then testified that he did sign it, but that the memo was subsequently overturned, but he could not state by whom, or when. He was then shown a memo accompanying a notice of a meeting for Order Takers on March 22, stating:

30 In 2013 In Room Dining had an incident where the CEO of a large convention group was denied room service because he did not have a credit card on file to secure his room for incidental charges. He didn't have a credit card on file because he was a comp reservation due to the large piece of business his company contracted with MGM Grand.

35 As a result of the incident, In Room Dining Management changed their policies on how to handle such situations moving forward from 3/22/2013. Order takers were instructed to not police the situation. They should take the guest order. After they are off the phone with the guest they should alert the manager that there is not [sic] credit card securing the room or that the person placing the order may not be the person the room is  
40 registered to. The manager will then make a decision on how to proceed and investigate further as they deem necessary.

45 Attached is a copy of the memo that was posted indicating the required scheduled times of those meetings.

The attached stated that the meeting subject was "To Openly Discuss Customer Service Concerns and Menu Issues." Attendance was mandatory for four named employees, including Simmons.

## 50 **B. December 12 Meeting**

On December 12, shortly before midnight, Simmons was asked to attend a meeting with

Rodzach, Galvez, who became the assistant manager of in-room dining in about September, and Makridis,” and there are major credibility issues as to what occurred at this meeting. Simmons testified that while he was answering phone orders on that evening, Rodzach tapped on the window of the order takers’ room and said that she would like to see him in her office, which is adjacent to the order takers’ room, and that she had tried to get “a regular shop steward, but it being that late at night, she found...a bar steward, which is...equivalent.” When he completed his phone orders, he walked into the manager’s office and Galvez and Makridis were there at that time. About five minutes later, Rodzach came into the room while holding a paper in her hand. While “slapping her finger on the paper” that she was holding, she told Simmons that he was rude, discourteous, and was not “the room service police,” and that he was unprofessional in the performance of his job. “She at one point asked me during her slapping of the paper whether I did it. She asked me if I was rude or even if I was discourteous. She informed me that the guest complaint was really quite serious. And I let her go for a while. It seemed... like four or five minutes without any type interruptions.” When she stopped talking, she handed the paper to Galvez, who was sitting close to Simmons, and Simmons asked if he could see it. “Jason placed the write-up---or paper in my hand and I read approximately two lines or... the first couple of sentences...” and put the paper on the desk.<sup>2</sup> Rodzach began saying that the guest complaint was that he was rude and discourteous and Simmons tried to say something, but Rodzach kept talking. On the third occasion he attempted to interrupt her by saying , “excuse me,” he raised his voice “just a tad bit more” in order to get their attention and said that he did not want to talk any further about the incident without his shop steward. When they “pretended like they did not hear me,” he repeated it, and said, “Where is my shop steward...or my bar steward that you told me would be coming?” Rodzach did not respond to his request, and repeated that he was rude, discourteous and was not the room service police, and asked, “Weren’t you here when we told you about the cash customers and what you’re supposed to do? We’ve been through this before. I want to know, man, did you do it...were you rude to the guest?” Simmons responded that he was not going to discuss the incident further and was going to leave the room. He stood up and Makridis said that if he left the room, “then I was going to be sent home,” so he sat back down. Rodzach repeated that he was rude and unprofessional and he again asked for the shop steward that he had promised to provide, and that he was “...ending this meeting in its whole entirety and I am walking out of this room.” As he was leaving the office, Rodzach said that she didn’t want him back on the phones, and he replied that was fine with him as he was going to security, and he left the office and went to Respondent’s security department, where he completed a “voluntary statement” of what occurred in the office. He testified that he did not use any profanity while in the manager’s office and raised his voice only to get Rodzach’s attention.

<sup>2</sup> In the affidavit that Simmons gave to the Board, he stated that Rodzach handed Galvez “the disciplinary write-up,” and that Galvez placed “the write-up” in his hand,” but insisted that he didn’t know what it was other than “just a piece of paper.” In a statement that Simmons prepared for the security department, he wrote: “She knows better not to talk about disciplinary action without my union steward or bar steward.” This statement also states that at this meeting, Rodzach gave him “...a written- which it should have been a verbal.” When asked how he knew that if he never saw the discipline, he testified that “he just assumed” that it was a written warning. Another affidavit of his states that it was felt that he “...was out of line because I stated I was not going to sign any disciplinary action;” in a later sentence, he states that he told Rodzach that he was not going “...to sign the disciplinary action” and “that we should not have been discussing the disciplinary action at all without a shop steward present.” Further, Tanara Pastore, employed by the Respondent as a cocktail server and a Union steward, testified that Simmons told her “...that they called him in the office to issue him discipline...” Yet, he continued to deny that he saw the write up on December 12.

Simmons was shown a document entitled: "Counseling Notice" which states that it was a written warning and was prepared on December 9. It states that Simmons was extremely rude to a VIP guest, who was very furious when she called the front desk manager to complain about him. The Notice also states that any further incidents of rude and inconsiderate behavior will lead to disciplinary action up to termination, and that Simmons "refused to sign and refused beverage shop steward." He testified that this is not the document that Galvez handed him at the meeting on December 12: "...it was something similar, but not this form...it was more or less of a summary...it didn't have anything on the top and it didn't have anything on the bottom."

Rodzach, who left the Respondent's employ in February 2014, testified that after receiving customer complaints about employees, she asks her assistants to investigate the matter and to notify her of the facts: "If its severe enough...we do a write up." On December 8 she received an email from Michelle Suson, a VIP manager, to Martha Houston, an assistant manager, describing the complaint by Mr. Ruiz about how "extremely rude" Simmons was to his wife. She asked Houston and her other assistant manager Doreen Al-Turkmani to speak to Simmons and learn what occurred. They reported to her that the guest was upset by what had occurred, and Rodzach determined that due to the severity of the guest complaint, discipline was warranted and on December 9 she prepared the Counseling Notice that was to be given to Simmons on December 12. Earlier that evening she asked Makridis to be present at the meeting with Simmons to act as a witness, and she also asked Galvez to be present. He was the newest assistant manager and she wanted him there for training purposes, "to witness the process." She asked Simmons to come in and when he came into the office, Galvez was reading over the Counseling Notice. When Simmons walked in, she told him that she was going to be issuing him a discipline pertaining to a guest complaint that occurred a few days earlier. She then told him that unfortunately she did not have a culinary department steward available, but a beverage steward was available and she could get him by making a phone call, but he did not respond to this offer. Instead, he "ripped" the paper out of Galvez' hand and began yelling, "I don't have to take this. You're not writing me up. This is all wrong. I spoke to Doreen Al-Turkmani and Houston about it." She didn't ask him any questions, because, "I didn't have a chance." Simmons said that the meeting was over and he was walking out of the meeting. Makridis then told him that if he walked out of the door he was walking off the job. She "tried to defuse the situation" by telling Simmons that since he was upset, he might want to take an early out for the shift. At that point, Simmons left the office. She immediately prepared an email to her superior telling him what occurred at the meeting and the following day she discussed it with him and decided to issue Simmons a Suspension Pending Investigation which issued, and was effective, December 13 and, on that date, she met with Simmons, Pastore and another steward and read the SPI to him and told him that it was due to his actions on the prior evening.

Galvez testified that on December 12 he was still a manager in training and attended the meeting together with Rodzach and Makridis. Earlier that evening Rodzach asked him if he had ever seen a write up before and he answered, only when he was in the military. She asked him if he would like to attend the meeting later that evening and he said that he would like to learn how it takes place. The meeting began at about 11:45 that evening. Simmons walked into the room with Rodzach right behind him. When they entered the room Galvez was holding the write up that Rodzach had written. After entering the room, Rodzach told Simmons that a culinary steward was not available, but that she could get a beverage steward, but Simmons did not respond to this statement. He said that he was being threatened and harassed and was not properly represented at the meeting, but he never asked for a steward to represent him at the meeting and Rodzach never asked him any questions. Simmons was yelling and speaking in a loud voice saying that this is not right, and "this is bullshit." Rodzach asked, "Can I say something?" but Simmons interrupted her. Makridis interrupted Simmons and said, "Clayton,

give her a chance to speak,” but he kept talking. Simmons continued to yell and talk loudly, being rude and disrespectful. Simmons “snatched” the write up out of his hand while he was reading it and continued to yell or speak loudly. As Simmons started walking toward the door to leave the room, Rodzach told him that if he walked out of the meeting, he would be sent home and Makridis said that if he walked out the door he was walking off the job. Before leaving the office, he said that he was going to the Security Department to file a report of harassment and threats committed by Rodzach and Makridis.

Makridis testified that Rodzach asked him to attend the meeting on December 12 to witness her giving Simmons a written warning for being rude to a guest. Rodzach began the meeting by telling Simmons that she was going to issue him a warning for being rude and discourteous to a guest and that while she did not have available a steward in the food department, she could get one from the beverage department, but he never responded to this offer. Instead, he grabbed the warning out of Galvez’ hand and began yelling at them. At that time, Makridis said, “Please sit down and give Tiffany a chance to explain to you what’s going on.” Simmons then said, “This is bullshit and I’m leaving” and said that he would have them all fired. Makridis told him that “if he walks out and leaves, he’s walking off his job.”<sup>3</sup> Simmons then said, “I’m leaving and I’m going to security.” He characterized Simmons actions at this meeting as insubordinate, rude and obnoxious.

Maureen Keefe-Wiseman is employed by the Respondent as a human resources business partner. One aspect of her job is investigations involving, at the time, the culinary, catering and room service departments. On December 16, Leann Wilson, also a human resources business partner, told her that Rodzach told her of the December 12 incident involving Simmons, who was suspended pending investigation as a result of the incident. As part of her investigation she interviewed Rodzach who told her of the guest complaint that lead to the meeting, and what occurred at the December 12 meeting. She was also given statements about the December 12 meeting that were prepared by Makridis and Galvez, as well as the SPI that was given to Simmons. She then arranged a “due process meeting” on December 17, which was attended by Simmons, Pastore, Wilson and herself. He denied that he did anything wrong in his conversation with Ms. Ruiz and that Rodzach created a “hostile environment” in the December 12 meeting and that he was not being rude. After this meeting she investigated a claim made by Simmons that “Jay” or “J”, a male front desk manager, had written a note in OPERA that said that he acted properly in his conversation with Ms. Ruiz. She investigated the employees at the front desk and found that there was no employee named Jay, and that the only employee with the initial J was a woman, Jennifer Davis, of the concierge VIP lounge, which is the front desk where the VIP customers check in. She also felt that in order to investigate the December 8 situation fully, she should interview Caroline Kusiak, the order taker who spoke to Ms. Ruiz in the subsequent conversation that evening. In notes that Wiseman took at the meeting with Kusiak on December 20, she wrote that Kusiak said that Ms. Ruiz overheard what Simmons said while she was on the phone with her, and that she was upset and said that she would call the front desk, but that Simmons’ demeanor was normal, not negative. She was also asked:

Do you recall a meeting back in March when we discussed that order takers are not the police and when this situation comes up that you should have a manager assist?

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<sup>3</sup> Section 18.01(a) of the contract between the Employer and the Union provides that the Employer may impose an immediate suspension or discharge upon an employee who walks off the job during a shift.

CK: Yes. We were told to basically just let everyone charge to the room they are calling from.

MKW: Does Clayton do this?

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CK: Clayton gets very technical. He says it is credit card fraud if the person calling isn't registered to the room. He is still a stickler to how we used to do it.

10 A few minutes after this meeting, Kusiak came to Wiseman's office and told her that she felt like a "snitch," but wanted to return to tell her what had occurred on December 8. The guest told her that Simmons was very rude to her. In addition, after the guest complaint was entered into the OPERA system, Simmons made an addition to these comments to make it seem that he did not do anything wrong. When Wiseman investigated this allegation, she found that there was an  
15 entry about Ms. Ruiz' complaint about Simmons, and that on December 8 at 5:31 P.M., Simmons made a "comment update" stating: "clayton from room service was not rude. He just explained the policy and Mrs. Ruiz didn't like the explanation given." Wiseman then spoke to Suson, who had spoken to Ms. Ruiz about her complaint about Simmons and logged it in OPERA, which is customary upon receiving a customer complaint. Suson told Wiseman that  
20 she received a call from Simmons who was upset about the comments about him in OPERA and that she did not write the comments that were added ("Clayton... was not rude...").

On December 26, Wiseman held another meeting with Simmons with her new boss, Monica Dorsey, and Pastore. She testified that Dorsey asked Simmons if he had been denied a  
25 shop steward at the December 12 meeting, and he said no, he had not been refused one. He was asked if he had edited the OPERA notes, and "he was not forthcoming in telling us he had edited the notes," although he eventually admitted that he did enter that note. In addition, he did not allege that he had been interrogated, or asked questions by, Rodzach at the December 12 meeting. After this meeting, she met with Dorsey to determine what discipline, if any, was  
30 appropriate for Simmons, and they determined that he would be issued a five day suspension with an opportunity to write a plan on how he could be more successful as an employee. She met with him on January 1, 2014, with a steward present and on January 3, he returned and they reviewed his plan. He returned to work on January 3, 2014.

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### III. Analysis

There are major credibility issues regarding the events of December 8, December 12 but, in this situation, I find that this determination is not a difficult one. Rodzach, Makridis and Galvez all appeared to be credible witnesses testifying to the events of the evening of  
40 December 12 as best they could recollect it. It is not surprising that their testimony did not match perfectly. The meeting took place seven months earlier and it was a turbulent meeting, which may have contributed to the differences in their testimony. Additionally, I can see no reason why the Respondent would be "out to get" Simmons. The food and beverage employees at the hotel were represented by the Union and the testimony establishes that the Respondent was careful  
45 in following the terms of the contract in dealing with its unionized employees. Counsel for the General Counsel, in his opening statement, argued that the fact that Respondent had three representatives at the meeting was further evidence that it was an investigatory meeting. However, the testimony of Galvez and Rodzach clearly established that Galvez was a supervisor in training on that day, and was asked to attend in order to experience such an  
50 interview.

On the other hand, I found Simmons to be an untrustworthy witness whose testimony

had many inconsistencies. In asserting that he handled the call from Ms. Ruiz properly, Simmons testified that the policy regarding VIP guests had not changed and that he had never received training otherwise. When shown the February 16 memo to food service order takers regarding a change in the procedure for VIP guests, he testified that he didn't believe that he was there for the meeting. When shown that he had attended the meeting, but did not agree with the new policy, he testified that he did attend, but that the new policy was subsequently overturned, although he could not specify when, and by whom. Additionally, Simmons testified that he was never shown, or given, the written warning on December 12 (which I do not credit), but he used the word "disciplinary," "discipline" or "write up" numerous times in his affidavits, his testimony, and his conversation with Pastore to describe the December 12 meeting. Finally, his testimony that "Jay" a front desk manager exonerated him from any wrongdoing, while, apparently, Jay does not exist, and his insertion in OPERA that he did nothing wrong further illustrates that his testimony is not trustworthy.

Based upon the credited testimony of Rodzach, Galvez and Makridis, I find that the Counseling Notice that Rodzach gave Simmons on December 12 was written on December 9. When Simmons came into the office she told him that she was issuing him a discipline for being rude to a guest on December 8, but that although she did not have a culinary department steward available, a beverage steward was available and could be contacted by phone. He did not respond to this offer, but took the write up out of Galvez' hand and yelled, "I don't have to take this. This is wrong. This is bullshit," and threatened that he would have their jobs. He also said that the meeting was over and he was leaving. Rodzach said that he might want to take an early out if he wanted to leave, and Makridis told him that if he left, he was walking off the job. He then said that he was going to the Security Department and left the office.

The law is clear that employees are entitled to *Weingarten*<sup>4</sup> representation in either "investigatory" or "disciplinary" interviews except for "those conducted for the exclusive purpose of notifying an employee of previously determined disciplinary action." *Baton Rouge Water Works Company*, 246 NLRB 995, 997 (1979). However, even if an employer meets with an employee to inform him/her of previously determined disciplinary action, if the employer then proceeds to question the employee in order to bolster its decision, the right to representation applies. *Titanium Metals Corporation*, 340 NLRB 766, 774 (2003).

As the Counseling Notice was prepared on December 9, and as I credit Rodzach, Galvez and Makridis, I find that the purpose of the meeting was simply to inform Simmons of the discipline. Counsel for the General Counsel alleges that Rodzach attempted to discuss the December 8 situation with Simmons, and he was therefore entitled to Union representation under *Titanium Metals*, *supra*. I disagree. Although he might have been entitled to representation if she had questioned him about the event, the credited evidence establishes that because of Simmons' actions at the meeting, she never had an opportunity to question him. Further, as I have credited Respondent's witnesses, I find that at the beginning of the meeting, Rodzach told Simmons that while she did not have a culinary steward available, she could obtain a beverage steward for the meeting, but he never responded. Therefore, even though I have found that Simmons was not entitled to a representative at this meeting, as it was simply to notify him of the discipline, one was offered to him. I therefore recommend that this allegation be dismissed.

It is next alleged that the Respondent violated Section 8(a)(1) of the Act when Makridis told Simmons that if he left the office he was walking off his job. Without question, a threat to an

<sup>4</sup> *NLRB v. J. Weingarten, Inc.*, 420 U.S. 251 (1975).



employee in retaliation for engaging in protected concerted activities, violates Section 8(a)(1) of the Act. However, in order to establish such a violation, there must be a threat as well as protected concerted activities. As I have found that Simmons never engaged in protected concerted activities at the December 12 meeting, even if Makridis' statement can be construed to be a threat, which I need not decide, I recommend that this allegation be dismissed.

The final allegation of the Complaint is that on December 13, the Respondent suspended Simmons pending its investigation of him, in violation of Section 8(a)(1)(3) of the Act.<sup>5</sup> This is to be determined under the test set forth in *Wright Line*, 251 NLRB 1083 (1980), whereby Counsel for the General Counsel must make a *prima facie* showing sufficient to support the inference that the employee's protected conduct was a "motivating factor" in the Respondent's decision. Based upon the credited facts herein, there was no protected conduct and even if there were, his behavior at the December 12 meeting justified the SPI that was given to him. I therefore recommend that this allegation, as well, be dismissed.

### Conclusions of Law

1. Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

2. The Union has been a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent did not violate Section 8(a)(1)(3) of the Act as alleged in the Complaint.

On these findings of fact, conclusions of law and based on the entire record, I hereby issue the following recommended<sup>6</sup>

### ORDER

It is recommended that the Complaint be dismissed in its entirety.

**Dated, Washington, D.C. September 3, 2014**

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Joel P. Biblowitz  
Administrative Law Judge

<sup>5</sup> There is no allegation that Respondent's five day suspension given to Simmons on January 1, 2013, violated the Act.

<sup>6</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.